

Robert E. Sabido, WSBA No. 29170  
[rsabido@cvk-law.com](mailto:rsabido@cvk-law.com)

COSGRAVE VERGEER KESTER LLP  
805 SW Broadway, 8th Floor  
Portland, Oregon 97205  
Telephone: (503) 323-9000  
Facsimile: (503) 323-9019

Attorney for Defendant Equable  
Ascent Financial, LLC

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LYNDA THOMAS,

Plaintiff,

v.

APEX FINANCIAL MANAGEMENT, LLC,  
and EQUABLE ASCENT FINANCIAL, LLC  
f/k/a HILCO RECEIVABLES, LLC,

Defendants.

Case No. CV-10-00067 RMP

**ANSWER, AFFIRMATIVE DEFENSES,  
AND COUNTERCLAIM OF  
DEFENDANT EQUABLE ASCENT  
FINANCIAL, LLC**

Defendant Equable Ascent Financial, LLC ("EAF") answers plaintiff's second amended complaint ("the complaint") as follows:

**NATURE OF ACTION**

1. Admits that this purports to be an action brought under the Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.* ("FDCPA"); the Telephone Consumer Protection Act, 47 U.S.C. §227 ("TCPA"); and the Washington Collection Agency Act, RCW chapter 19.16 ("WCAA"); but denies the applicability of and/or any liability under those statutes.

**JURISDICTION AND VENUE**

2. Admits that this court generally has subject matter jurisdiction over claims under the FDCPA, but denies the remaining allegations in paragraph 2.

3. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 3 and, therefore, denies those allegations.

## PARTIES

4. Admits, on information and belief, that plaintiff is a natural person. EAF lacks sufficient information to form a belief as to the truth of the remaining allegations in paragraph 4 and, therefore, denies those allegations.

5. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 5 and, therefore, denies those allegations.

6. Admits it is an entity that purchases accounts but denies the remaining allegations in paragraph 6.

7. Admits the allegations in paragraph 7.

8. Denies the allegations in paragraph 8.

9. Admits the allegations in paragraph 9.

10. Admits the allegations in paragraph 10.

11. Admits the allegations in paragraph 11.

12. Admits the allegations in paragraph 12.

13. Admits that it provides direct servicing of consumer collections for distressed debt buyers other than itself, utilizing its in house platform.

14. Admits the allegations in paragraph 14.

15. Admits the allegations in paragraph 15.

16. Admits the allegations in paragraph 16.

17. Admits that defendant Apex Financial Management, LLC (“Apex”) is a limited liability company engaged, from time to time, in the business of attempting to collect debts. EAF lacks sufficient information to form a belief as to the truth of the remaining allegations in paragraph 17 and, therefore, denies those allegations.

///

1 18. EAF lacks sufficient information to form a belief as to the truth of the  
2 allegations in paragraph 18 and, therefore, denies those allegations

3 19. Admits that Apex does business in the office building located at 1120 Lake  
4 Cook Road, Buffalo Grove, Illinois 60089, but denies the remaining allegations in  
5 paragraph 19.

6 20. Admits that Apex collects debts. EAF lacks sufficient information to form a  
7 belief as to the truth of the remaining allegations in paragraph 20 and, therefore, denies  
8 those allegations.

9 21. Admits that Apex collects debts. EAF lacks sufficient information to form a  
10 belief as to the truth of the remaining allegations in paragraph 21 and, therefore, denies  
11 those allegations.

12 22. Admits that Apex collects debts. EAF lacks sufficient information to form a  
13 belief as to the truth of the remaining allegations in paragraph 22 and, therefore, denies  
14 those allegations.

15 23. Denies the allegations in paragraph 23.

16 24. Denies the allegations in paragraph 24.

17 25. Admits that Apex and EAF do business in the office building located at  
18 1120 Lake Cook Road, Buffalo Grove, Illinois. EAF denies the remaining allegations in  
19 paragraph 25.

20 26. Denies the allegations in paragraph 26.

21 27. Denies the allegations in paragraph 27.

22 28. Denies the allegations in paragraph 28.

23 29. Denies the allegations in paragraph 29.

24 30. Denies the allegations in paragraph 30.

25 31. Denies the allegations in paragraph 31.

26 32. Denies the allegations in paragraph 32.

33. Denies the allegations in paragraph 33.

34. Denies the allegations in paragraph 34.

35. Denies the allegations in paragraph 35.

#### **FACTUAL ALLEGATIONS**

36. Admits, on information and belief, that plaintiff is a natural person and that she is listed as the debtor on an account that EAF purchased from another creditor.

EAF denies the remaining allegations in paragraph 36.

37. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 37 and, therefore, denies those allegations.

38. Admits that Apex engages, from time to time, in the business of attempting to collect debts. EAF lacks sufficient information to form a belief as to the truth of the remaining allegations in paragraph 38 and, therefore, denies those allegations.

39. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 39 and, therefore, denies those allegations.

40. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 40 and, therefore, denies those allegations.

41. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 41 and, therefore, denies those allegations.

42. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 42 and, therefore, denies those allegations.

43. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 43 and, therefore, denies those allegations.

44. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 44 and, therefore, denies those allegations.

45. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 45 and, therefore, denies those allegations.

1           46.    EAF lacks sufficient information to form a belief as to the truth of the  
2   allegations in paragraph 46 and, therefore, denies those allegations.

3           47.    EAF lacks sufficient information to form a belief as to the truth of the  
4   allegations in paragraph 47 and, therefore, denies those allegations.

5           48.    EAF lacks sufficient information to form a belief as to the truth of the  
6   allegations in paragraph 48 and, therefore, denies those allegations.

7           49.    EAF lacks sufficient information to form a belief as to the truth of the  
8   allegations in paragraph 49 and, therefore, denies those allegations.

9           50.    EAF lacks sufficient information to form a belief as to the truth of the  
10   allegations in paragraph 50 and, therefore, denies those allegations.

11          51.    EAF lacks sufficient information to form a belief as to the truth of the  
12   allegations in paragraph 51 and, therefore, denies those allegations.

13          52.    EAF lacks sufficient information to form a belief as to the truth of the  
14   allegations in paragraph 52 and, therefore, denies those allegations.

15          53.    EAF lacks sufficient information to form a belief as to the truth of the  
16   allegations in paragraph 53 and, therefore, denies those allegations.

17          54.    EAF lacks sufficient information to form a belief as to the truth of the  
18   allegations in paragraph 54 and, therefore, denies those allegations.

19          55.    EAF lacks sufficient information to form a belief as to the truth of the  
20   allegations in paragraph 55 and, therefore, denies those allegations.

21          56.    EAF lacks sufficient information to form a belief as to the truth of the  
22   allegations in paragraph 56 and, therefore, denies those allegations.

23          57.    EAF lacks sufficient information to form a belief as to the truth of the  
24   allegations in paragraph 57 and, therefore, denies those allegations.

25          58.    EAF lacks sufficient information to form a belief as to the truth of the  
26   allegations in paragraph 58 and, therefore, denies those allegations.

59. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 59 and, therefore, denies those allegations.

60. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 60 and, therefore, denies those allegations.

61. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 61 and, therefore, denies those allegations.

62. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 62 and, therefore, denies those allegations.

63. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 63 and, therefore, denies those allegations.

64. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 64 and, therefore, denies those allegations.

65. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 65 and, therefore, denies those allegations.

66. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 66 and, therefore, denies those allegations.

67. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 67 and, therefore, denies those allegations.

68. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 68 and, therefore, denies those allegations.

69. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 69 and, therefore, denies those allegations.

70. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 70 and, therefore, denies those allegations.

71. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 71 and, therefore, denies those allegations.

72. EAF lacks sufficient information to form a belief as to the truth of the allegations in paragraph 72 and, therefore, denies those allegations.

**COUNT I**

73. As to paragraph 73, EAF admits and denies as alleged above.

74. Denies the allegations in paragraph 74, including subparagraphs a) through f), to the extent those allegations are directed at EAF. To the extent the allegations are directed at another defendant, they do not require a response from EAF.

## COUNT II

75. As to paragraph 75, EAF admits and denies as alleged above.

76. Denies the allegations in paragraph 76, including subparagraphs a) through f), to the extent those allegations are directed at EAF. To the extent the allegations are directed at another defendant, they do not require a response from EAF.

### COUNT III

77. As to paragraph 77, EAF admits and denies as alleged above.

78. Denies the allegations in paragraph 78, including subparagraphs a) through f), to the extent those allegations are directed at EAF. To the extent the allegations are directed at another defendant, they do not require a response from EAF.

**COUNT IV**

79. As to paragraph 79, EAF admits and denies as alleged above.

80. Denies the allegations in paragraph 80, including subparagraphs a) through f), to the extent those allegations are directed at EAF. To the extent the allegations are directed at another defendant, they do not require a response from EAF.

## COUNT V

81. As to paragraph 81, EAF admits and denies as alleged above.

///

///

82. Denies the allegations in paragraph 82, including subparagraphs a) through f), to the extent those allegations are directed at EAF. To the extent the allegations are directed at another defendant, they do not require a response from EAF.

## COUNT VI

83. As to paragraph 83, EAF admits and denies as alleged above.

84. Denies the allegations in paragraph 84, including subparagraphs a) through f), to the extent those allegations are directed at EAF. To the extent the allegations are directed at another defendant, they do not require a response from EAF.

## COUNT VII

85. As to paragraph 85, EAF admits and denies as alleged above.

86. Denies the allegations in paragraph 86, including subparagraphs (1) through (4) and a) through e), to the extent those allegations are directed at EAF. To the extent the allegations are directed at another defendant, they do not require a response from EAF.

87. Except as specifically admitted, EAF denies each and every allegation of the complaint.

## AFFIRMATIVE DEFENSES

88. Plaintiff fails to state a claim against EAF upon which relief can be granted.

89. Plaintiff has no cause of action against EAF under the FDCPA for one or more of (but not limited to) the following reasons: (a) EAF is not a “debt collector,” as defined by 15 U.S.C. §1692a(6); and (b) EAF did not attempt to collect any debt from plaintiff.

90. Plaintiff has no cause of action against EAF under the TCPA because EAF did not make any telephone calls to plaintiff, using an automatic telephone dialing system or otherwise.



91. Plaintiff has no cause of action against EAF under the WCAA for one or more of (but not limited to) the following reasons: EAF is not a “licensee” or an employee of a “licensee,” as that term is defined in RCW 19.16.100(9).

92. Plaintiff's damages, if any, were the result of her own fault or the fault of others for whom EAF is not responsible or liable.

93. Plaintiff's damages, if any, were aggravated by her own failure to use reasonable diligence to mitigate them.

94. To the extent EAF is found to be subject to the FDCPA, any violation of that statute resulted from a bona fide, unintentional error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Therefore, EAF cannot be held liable for any such violation.

95. To the extent EAF is found to be subject to the TCPA, plaintiff consented to be contacted on her cell phone.

96. Plaintiff has sustained no injury to her business or property, or any other cognizable injury or damage.

97. Service of the summons and complaint on EAF was insufficient.

## COUNTERCLAIM

98. EAF is entitled to recover its attorney's fees against plaintiff, under 15 U.S.C. §1692k(a)(3).

## RESERVATION OF RIGHT TO AMEND

99. EAF reserves its right to amend and to add further defenses or claims, as relevant information becomes available.

WHEREFORE, EAF prays for judgment in its favor on plaintiff's claims and on EAF's counterclaim; for dismissal of plaintiff's claims against EAF with prejudice; for

///

1 EAF's attorney's fees, costs and disbursements; and for any other relief that the court  
2 decides is proper.

3 DATED: November 16, 2010

4  
5 s/ Robert E. Sabido

6 Robert E. Sabido, WSBA No. 29170

7 [rsabido@cvk-law.com](mailto:rsabido@cvk-law.com)

8 Attorneys for Defendant Equable Ascent  
9 Financial, LLC

10 COSGRAVE VERGEER KESTER LLP

11 805 SW Broadway, 8<sup>th</sup> Floor

12 Portland, OR 97205

13 Telephone: (503) 323-9000

14 Fax: (503) 323-9019  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Jon N. Robbins  
Weisberg & Meyers, LLC  
3877 N. Deer Lake Road  
Loon Lake, WA 99148

AND

Aaron D. Radbil  
Weisberg & Meyers, LLC  
5722 S. Flamingo Road, Suite 656  
Cooper City, FL 33330  
Attorneys for Plaintiff

Jeffrey I. Hasson  
Davenport & Hasson, LLP  
12707 NE Halsey Street  
Portland, OR 97230  
Attorneys for Defendant Apex Financial Management, LLC

s/ Robert E. Sabido  
Robert E. Sabido, WSBA No. 29170  
[rsabido@cvk-law.com](mailto:rsabido@cvk-law.com)  
Attorney for Defendant  
Equable Ascent Financial, LLC  
805 SW Broadway, 8<sup>th</sup> Floor  
Portland, OR 97205  
Telephone: 503.323.9000  
Facsimile: 503.323.9019